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Letter dated 9 April 2012 from the Secretary-General to the President of the Security Council

I have the honour to transmit herewith letters dated 20 and 29 March 2012 from the President of the International Residual Mechanism for Criminal Tribunals and Presiding Judge of the Appeals Chamber of the International Criminal Tribunal for Rwanda, Judge Theodor Meron, and the President of the International Criminal Tribunal for Rwanda, Judge Vagn Joensen (see annexes I and II).

In their letters, Judges Meron and Joensen jointly request that the appeals, if any, in the *Ngirabatware*, *Nizeyimana* and *Nzabonimana* cases should be heard by the Appeals Chamber of the International Criminal Tribunal for Rwanda and not the Appeals Chamber of the Mechanism.

I recall that, pursuant to article 2 (2) of the Transitional Arrangements set out in annex 2 to Security Council resolution 1966 (2010), the International Criminal Tribunal for Rwanda shall have competence to conduct, and complete, all appellate proceedings for which the notice of appeal against the judgement or sentence is filed before 1 July 2012, and the Mechanism shall have competence to conduct, and complete, all appellate proceedings for which the notice of appeal against the judgement or sentence is filed on or after 1 July 2012. Since it is projected that the notices of appeals, if any, in the aforementioned cases would be filed after 1 July 2012, the appeals would, according to this provision, be heard by the Appeals Chamber of the Mechanism.

However, Judges Meron and Joensen are of the view that it would be more efficient if the appeals were handled by the Appeals Chamber of the International Criminal Tribunal, as opposed to the Appeals Chamber of the Mechanism. They are therefore seeking derogation from the provisions of the Transitional Arrangements in order that the Appeals Chamber of the Tribunal may exercise jurisdiction over the appeal. They further state that the Prosecutor of the Tribunal and the Mechanism, and the Registrars of the Tribunal and the Mechanism, support the request.

It falls to the Security Council, as the parent organ of both the Tribunal and the Mechanism, to consider and decide on this request. I would therefore be grateful if you would bring the present letters from Judge Meron and Judge Joensen to the attention of members of the Council.

(*Signed*) **BAN** Ki-moon

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Annex I

Letter dated 20 March 2012 from the President of the International Criminal Tribunal for Rwanda and the President of the International Residual Mechanism for Criminal Tribunals and Presiding Judge of the Appeals Chamber of the International Criminal Tribunal for Rwanda addressed to the President of the Security Council

We write to request a limited derogation of the jurisdictional provisions of the International Residual Mechanism for Criminal Tribunals with respect to any appeal in the case of *The Prosecutor v. Augustin Ngirabatware*. We transmit this request on behalf of the International Criminal Tribunal for Rwanda and the Mechanism, and with the agreement of the Registrar of the Tribunal, Mr. Adama Dieng; the Registrar of the Mechanism, Mr. John Hocking; and the Prosecutor of the Tribunal and the Mechanism, Mr. Hassan Bubacar Jallow.

As you are aware, Security Council resolution 1966 (2010) establishing the Mechanism provides that the Arusha branch shall commence functioning on 1 July 2012. The Transitional Arrangements of the International Residual Mechanism for Criminal Tribunals prescribe that the International Criminal Tribunal for Rwanda has competence to conduct and complete all appellate proceedings for which the notice of appeal against the judgement or sentence is filed prior to the date of 1 July 2012. The appellate proceedings in all other cases are within the jurisdictional competence of the Mechanism.

Currently, three substantive cases remain to be completed before the International Criminal Tribunal for Rwanda at the trial level. In two of the cases, the trial judgements are expected to be delivered in writing more than 30 days prior to 1 July 2012, allowing for the timely filing before the Tribunal of any notices of appeal in these cases. In the *Ngirabatware* case, however, the written judgement and any notice of appeal are projected to be filed after 1 July 2012. Consequently, any appeal would, under the Transitional Arrangements, fall to the jurisdictional competence of the Mechanism.

The Appeals Chamber of the Mechanism is currently not expected to have any other matter before it in 2012. Therefore, from the point of view of organizational efficiency, it would be preferable to have any appeal against the trial judgement in the *Ngirabatware* case adjudicated by the Appeals Chamber of the International Criminal Tribunal for Rwanda. The Appeals Chamber of the Tribunal had planned to consider the *Ngirabatware* case and included the case in the Tribunal's budgetary projections when it appeared that the trial judgement would be rendered prior to the commencement date of the Arusha branch of the Mechanism. The Tribunal's Appeals Chamber could thus incorporate any appeal in the *Ngirabatware* case into its remaining caseload without disturbing the Completion Strategy or impacting the Tribunal's budget. Moreover, at the time the *Ngirabatware* case is expected to come before it, the Tribunal's Appeals Chamber will have a full complement of Judges on its bench and will be supported by its existing staff. Permitting the Tribunal's Appeals Chamber to hear and decide any appeal in the *Ngirabatware* case would prevent unnecessarily burdening the Mechanism with the need to empanel and support a five-Judge bench in the Mechanism's Appeals Chamber.

Assigning any appeal from judgement or sentence in the *Ngirabatware* case to the Appeals Chamber of the Tribunal could be accomplished by a resolution of the Security Council vesting the Tribunal, on an exceptional basis, with jurisdictional competence over any such appeal, notwithstanding the applicable provision of the Transitional Arrangements. We believe that such a resolution is the most efficient means of addressing the remaining workload of the Tribunal, to assure a smooth transition to the Mechanism, and to serve the broader goals of the Council.

(*Signed*) Vagn **Joensen**
President, International Criminal Tribunal for Rwanda

(*Signed*) Theodor **Meron**
President, International Residual Mechanism for Criminal Tribunals
Presiding Judge, Appeals Chamber of the
International Criminal Tribunal for Rwanda

Annex II

Letter dated 29 March 2012 from the President of the International Criminal Tribunal for Rwanda and the President of the International Residual Mechanism for Criminal Tribunals and Presiding Judge of the Appeals Chamber of the International Criminal Tribunal for Rwanda addressed to the President of the Security Council

We refer to our letter of 20 March 2012, requesting a limited derogation of the jurisdictional provisions of the International Residual Mechanism for Criminal Tribunals with respect to any appeal in the case of *The Prosecutor v. Augustin Ngirabatware*. It has now come to our attention that it is probable that there will also be delays in the delivery of the written trial judgements in the case of *The Prosecutor v. Ildephonse Nizeyimana* and in the case of *The Prosecutor v. Callixte Nzabonimana*.

Accordingly, we transmit this request for a limited derogation in the case of *The Prosecutor v. Ildephonse Nizeyimana* and in the case of *The Prosecutor v. Callixte Nzabonimana* on behalf of the International Criminal Tribunal for Rwanda and the Mechanism, and with the agreement of the Registrar of the International Criminal Tribunal for Rwanda, Mr. Adama Dieng; the Registrar of the Mechanism, Mr. John Hocking; and the Prosecutor of the Tribunal and the Mechanism, Mr. Hassan Bubacar Jallow. We ask that this request be considered in conjunction with our request of 20 March 2012.

As you are aware, Security Council resolution 1966 (2010) establishing the Mechanism provides that the Arusha branch shall commence functioning on 1 July 2012. The Transitional Arrangements of the International Residual Mechanism for Criminal Tribunals prescribe that the International Criminal Tribunal for Rwanda has competence to conduct and complete all appellate proceedings for which the notice of appeal against the judgement or sentence is filed prior to the date of 1 July 2012. The appellate proceedings in all other cases are within the jurisdictional competence of the Mechanism.

The cases of *The Prosecutor v. Augustin Ngirabatware*, *The Prosecutor v. Ildephonse Nizeyimana* and *The Prosecutor v. Callixte Nzabonimana* are the only substantive cases that remain to be completed before the International Criminal Tribunal for Rwanda at the trial level. As we earlier advised, in the *Ngirabatware* case, the written judgement and any notice of appeal are projected to be filed after 1 July 2012. Consequently, any appeal would, under the Transitional Arrangements, fall to the jurisdictional competence of the Mechanism. It is probable that the written judgements in the *Nizeyimana* case and the *Nzabonimana* case will also not be delivered in writing more than 30 days prior to 1 July 2012, and thus any appeals from these cases may also fall to the jurisdictional competence of the Mechanism.

Without a grant of derogation from the jurisdictional provisions of the Mechanism, the Appeals Chamber of the Mechanism could have three cases before it in 2012. However, from the point of view of organizational efficiency, it would be preferable to have any appeal against the trial judgements in these cases adjudicated by the Appeals Chamber of the International Criminal Tribunal for Rwanda. The Appeals Chamber of the Tribunal had planned to consider these cases and included

them in the Tribunal's budgetary projections when it appeared that all trial judgements would be rendered prior to the commencement date of the Arusha branch of the Mechanism. The Tribunal's Appeals Chamber had already thus incorporated the expected appeals in these three cases into its remaining projected caseload. The appeals in these cases could therefore be handled by the Tribunal without disturbing the Completion Strategy or impacting the Tribunal's budget. Moreover, at the time these cases are expected to come before it, the Tribunal's Appeals Chamber will have a full complement of Judges on its bench and will be supported by its existing staff. Permitting the Tribunal's Appeals Chamber to hear and decide any appeal in all of these cases would avoid unnecessarily burdening the Mechanism with the need to empanel and support a five-Judge bench in the Mechanism's Appeals Chamber.

Assigning any appeal from judgement or sentence in these cases to the Tribunal's Appeals Chamber could be accomplished by a resolution of the Security Council vesting the Tribunal, on an exceptional basis, with jurisdictional competence over any such appeal, notwithstanding the applicable provision of the Transitional Arrangements. We believe that such a resolution is the most efficient means of addressing the remaining workload of the Tribunal, to assure a smooth transition to the Mechanism, and to serve the broader goals of the Council.

(*Signed*) Vagn **Joensen**
President, International Criminal Tribunal for Rwanda

(*Signed*) Theodor **Meron**
President, International Residual Mechanism for Criminal Tribunals
Presiding Judge, Appeals Chamber of the International
Criminal Tribunal for Rwanda